90-1348 (4)

FILED
FEB 25 1991
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1990

IN RE: REVEREND ROBERT LEE BOND,

Petitioner

V.

ST. JOSEPH'S HOSPITAL, INC.,
ROBERT COFFEY, M.D.
DR. DWAIN MCDONALD, AND
MRS. DWAINE (JANE) MCDONALD,

Respondents.

APPENDIX

Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214
214-821-0220
TX Bar No. 05957750

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

DATE	INSTRUMENT	PAGE
06/05/90	Notice of Judgment and Opinion	1 - 2
06/05/90	Appeal Opinion(partial)	3 - 10
07/24/90	Order from Appeal Court Overruling M/Rehearing	11
10/17/90	Supreme Court denial of Writ/Error	12 - 13
12/12/90	Supreme Court overruling M/Rehearing	14 - 15

Article 5561h - Confidentiality of mental health information of individual 16 - 24

Amendment XIV - U.S. Constitution 25

Texas Rule 13 - Effect of signing of pleadings, motions and other papers; sanctions 25 - 26

Texas Rule of Evidence, Rule 902(10)a 27 - 28

Court of Appeals
Second Court of Appeals District of Texas
The Courthouse
Fort Worth, Texas 76196
Yvonne Palmer, Clerk
817/334-1900

June 5, 1990

Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214

Richard L. Griffith
Cantey, Hangar, Gooch, Munn & Collins
2100 First Republic Bank Tower
801 Cherry Street
Fort Worth, tX 76102

Kleber C. Miller
Shannon, Gracey, et al.
2200 First City Tower
201 Main Street
Fort Worth, TX 76102

Estil Vance, Jr.
Cantey & Hangar
2100 First RepublicBank Tower
801 Cherry Street
Fort Worth, TX 76102

RE: CASE NO. 02-88-00095-CV

STYLE: Bond, Rev. Robert L.
V: St. Joseph Hosp., Dr. Dwain McDonald, Rev. Jane McDonald, et al

The judgment of the trial court in the above case was affirmed today.

A copy of this Court't opinion and judgment are hereto attached.

Respectfully yours,

YVONNE PALMER, CLERK

By _____
Deputy

LETPR.07ds

NO. 2-88-095-CV

COURT OF APPEALS

SECOND COURT OF APPEALS DISTRICT OF TEXAS

FORT WORTH

REVEREND ROBERT LEE BOND APPELLANT

VS.

ST. JOSEPH'S HOSPITAL, DR. DWAIN MCDONALD, REVEREND JANE MCDONALD, AND DR. ROBERT COFFEY APPELLEES

FROM THE 352ND DISTRICT COURT
OF TARRANT COUNTY

OPINION

This is an appeal by Reverend Robert Lee Bond from a take-nothing judgment in favor of appellees, St. Joseph's Hospital, Dr. Dwain McDonald, Reverend Jane McDonald, and Dr. Robert Coffey, in appellant's suit alleging negligence, breach of confidentiality, false imprisonment, assault and battery, and negligence per se in violation of certain statutes. Appellant's thirty-two points of error present issues of erroneous

admission and exclusion of evidence, disallowance of trial amendments, failure to submit jury instructions, submission of jury instructions and special issues, limiting of time for jury argument, failure to grant a directed verdict, failure to permit jury voir dire into insurance industry related matters, and legal and factual sufficiency of evidence. ...

... As we view the objection (the admission into evidence of Bond's medical records of surgery and treatment at St. Luke's in 1967), it directed the trial court's attention to:

1. Relevancy of that portion of the records dealing with the gallbladder problem.

2. Hearsay nature of the records.

3. The records had previously been held,

by another judge, to be undiscoverable.

4. Timeliness of the offer of the records.

Additional grounds of inadmissibility, not presented to the trial court are urged in this appeal but will not be addressed, as they present nothing for review. DRAKE V. STATE, 488 S.W. 2d 534, 538 (Tex. Civ. App. - Dallas 1972, writ ref'd n.r.e.). As to relevancy of the records, we observe that appellant had previously testified as to his gallbladder surgery, followed by the episode of brain syndrome thus providing the relevancy of medical records of that hospitalization. Furthermore, the records of the episode following surgery were admissible to rebut appellant's assertion that he had never been diagnosed as having any kind of mental illness. As to the hear-

say objection, the record shows that the medical records were accompanied by an affidavit attesting to their accuracy and to their status as business records under the purview of TEX. R. CIV. EVID. 803(6), 902(10). Considering the objection that another judge had previously ruled on discoverability or admissibility of the medical records, we are provided no record reference nor citation of controlling authority in support of such contention, thus the objection is waived. SEE WOLF V. FERNANDEZ, 733 S.W. 2d 695, 697 (Tex. App. - San Antonio 1987, writ ref'd n.r.e.); REUBEN H. DONNELLEY CORP. V. MCKINNON, 668 S.W. 2d 612, 617 (Tex. App. - Corpus Christie 1985, writ ref'd n.r.e.). The same may be said, upon the timeliness of the objection. Point of error one is overruled.

Point of error twenty-three attempts to assign error to the submission of jury questions 11, 12, 13, 14, 15, 16, 17, and 18. In spite of the multiplicity of this point, we can discern the contention that the issues of waiver and estoppel regarding appellant's right to confidentiality embraced in those jury questions were improperly submitted, because such defenses are not available to defeat requirements of TEX. REV. CIV. STAT. ANN. art. 5561h (Vernon Supp. 1990) regarding confidentiality of mental health information.

The statute provides for confidentiality of communication between a patient/client and a professional, and also confidentiality of records of identity, diagnosis, evaluation, or treatment. The confidential matters shall not be disclosed except under

special circumstances, none of which exist in this case. Jury questions 11 and 15 inquire as to appellees, "Was any disclosure of information ... relating to the medical health condition of Plaintiff ... made at the request of Plaintiff?", to both of which the jury answered affirmatively. Questions 12, 13, 14, 16, 17 and 18 inquiring of waiver and estoppel were conditioned upon negative answers to 11 and 15, which applied to Dr. Coffey and Dr. McDonald respectively. Appellant argues that the statute requires a written waiver of disclosure, so that a request by the patient would not excuse the disclosure unless the request was made in writing. The language of the statute is:

> (b) Exceptions to the privilege of confidentiality, in other than court proceedings, allowing disclosure of confidential information by a professional, exist only to the following:
>
> (4) to any person bearing the

written consent of the patient/client... TEX. CIV. STAT. ANN. art. 5561h (Vernon Supp. 1990).

Appellant presents no argument, nor does he cite authority for the proposition that the above language excludes a lawful authorization to disclose by means of a verbal request of the patient. WE HOLD THAT DISCLOSURE OF CONFIDENTIAL INFORMATION OR RECORDS UPON THE VERBAL REQUEST OF THE PATIENT/CLIENT IS NOT VIOLATIVE OF THE PROVISIONS OF ART. 5561h. Additionally, appellant argues under this point that the submission of the conditional questions inquiring of waiver and estoppel constituted a comment on the weight of the evidence because they suggested there were defenses to the statute and that the "statute did not give exceptions of waiver or estoppel." No argument is made

or authority cited as to why the defenses of waiver or estoppel do not apply to the enforcement of a right given by statute, and we know of no reason. Point of error twenty-three is overruled. (Emp. added). ....

Judgment affirmed.

JOE SPURLOCK II
JUSTICE

PANEL A
WEAVER, C.J.; SPURLOCK II, AND LATTIMORE, JJ.
DO NOT PUBLISH
TEX. R. APP. P. 90(e)
JUNE 05 1990

COURT OF APPEALS
SECOND COURT OF APPEALS DISTRICT OF TEXAS
FORT WORTH

Rev. Robert L. Bond)

vs.) No.2-88-095-CV

St. Joseph's Hospital, et al.

ORDER

On this day came on to be considered appellant's motion for rehearing.

It is the opinion of this Court that said motion should be and is hereby OVERRULED. It is the order of this Court that the opinion and judgment of June 5, 1990, stand unchanged.

The Clerk of this Court is directed to transmit a copy of this Order to the attorneys of record.

It is so ordered.

SIGNED THIS 24th day of July, 1990.

H. TOD WEAVER
CHIEF JUSTICE

OVRULE.CVmj

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

October 17, 1990

Dr. Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214

Ms. Christine E. Holland
Mr. Estil Vance, Jr.
Ms. Evelyn R. Leopold
Mr. Richard L. Griffith
Cantey & Hanger
2100 First RepublicBank Tower
801 Cherry Street
Fort Worth, TX 76102

Mr. Stephen L. Tatum
Thompson & Knight
Suite 1600
801 Cherry Street
Fort Worth, TX 76102

Mr. Kleber C. Miller
Ms. Anne Gardner
Mr. Edward L. Wilkinson
Shannon, Gracey, Ratliff & Miller
2200 First City Bank Tower
201 Main Street
Fort Worth, TX 76102-0999

RE: Case No. D-0238

Style: REVEREND ROBERT LEE BOND
V. ST. JOSEPH'S HOSPITAL, INC., ROBERT COFFEY, M.D., DR. DWAIN MCDONALD & MRS. DWAINE (JANE) MCDONALD

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ Denied."

Sincerely,

JOHN T. ADAMS, Clerk

by_____
Courtland Crocker, Deputy

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

December 12, 1990

Dr. Bernard J. Dolenz
6102 Swiss Avenue
Dallas, TX 75214

Ms. Christine E. Holland
Cantey & Hanger
2100 First RepublicBank Tower
801 Cherry Street
Fort Worth, TX 76102

Ms. Anne Gardner
Shannon, Gracey, Ratliff & Miller
2200 First City Bank Tower
201 Main Street
Fort Worth, TX 76102-9990

Mr. Estil Vance, Jr.
Cantey & Hanger
801 Cherry Street
2100 InterFirst Tower
Fort Worth, TX 76102

Mr. Stephen L. Tatum
Thompsor & Knight
Suite 1600
801 Cherry Street
Fort Worth, TX 76102

Mr. Kleber C. Miller
Shannon, Gracey, Ratliff & Miller
2200 First City Bank Tower
201 Main Street
Fort Worth, TX 76102-0999

Mr. Edward L. Wilkinson
Shannon, Gracey, Ratliff & Miller
2200 First City Bank Tower
201 Main Street
Fort Worth, TX 76102-0999

Ms. Evelyn R. Leopold
Cantey & Hanger
2100 Burnett Plaza
801 Cherry Street
Fort Worth, TX 76102

RE: Case No. D-0238
Style: REVEREND ROBERT LEE BOND
V. ST. JOSEPH'S HOSPITAL, INC., ROBERT COFFEY, M.D., DR. DWAIN MCDONALD & MRS. DWAINE (JANE) MCDONALD

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Sincerely,

John T. Adams, Clerk

by _____
Blanca Morin, Deputy

Art. 5561h. Confidentiality of mental health information of individual.

DEFINITIONS OF THIS ACT

Section 1. (a) "Professional" means any person authorized to practice medicine in any state or nation, or any person licensed or certified by the State of Texas in the diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, or reasonably believed by the patient/client so to be.

(b) "Patient/Client" means any person who consults, or is interviewed by, a professional for purposes of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism and other drug addiction.

CONFIDENTIALITY OF INFORMATION

Sec. 2. (a) Communication between a patient/client and a professional is confidential and shall not be disclosed except as provided in Section 4 of this Act.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient/client which are created or maintained by a professional are confidential and shall not be disclosed except as provided in Section 4 of this Act. Nothing in this section shall prohibit the disclosure of information necessary in the collection of fees for mental or emotional health services, as provided by Subsection (b)(5) of Section 4 of this Act.

(c) Any person who receives information from confidential communications or

records as defined by Section 2, other than the persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's client's behalf, shall not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this Act continue to apply to confidential communications or records concerning any patient/client irrespective of when the patient/client received services of a professional.

PRIVILEGE OF CONFIDENTIALITY

Sec. 3 (a) The privilege of confidentiality may be claimed by the patient/client or by other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf.

(b) The professional may claim the privilege of confidentiality but only on behalf of the patient/client. the authority to do so is presumed in the absence of evidence to the contrary.

EXCEPTIONS TO THE PRIVILEGE
OF CONFIDENTIALITY

Sec. 4 (a) Exceptions to the privilege in court proceedings exist:

(1) when the proceedings are brought by the patient/client against a professional, including but not limited to malpractice proceedings, and in any criminal or license revocation proceedings in which the patient/client is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(2) when the patient/client waives his

right in writing to the privilege of confidentiality of any information, or when other persons listed in Subsection (b)(4) of Section 4 who are acting on the patient's/client's behalf submit a written waiver to the confidentiality privilege;

(3) when the purpose of the proceeding is to substantiate and collect on a claim for mental or emotional health services rendered to the patient/client;

(4) when the judge finds that the patient/client after having been previously informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's/client's mental or emotional condition or disorder, providing that such communications shall not be privileged only with respect to issues involv-

ing the patient's/client's mental or emotional health. On granting of the order, the court, in determining the extent to which any disclosure of all or any part of any communication is necessary, shall impose appropriate safeguards against unauthorized disclosure; or

(5) in any criminal prosecution where the patient is a victim, witness, or defendant. Records are not discoverable until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion thereof. Such determination shall not constitute a determination as to the admissibility of such records or communications or any portion thereof.

(b) Exceptions to the privilege of confidentiality, in other than court

proceedings, allowing disclosure of confidential information by a professional, exist only to the following:

(1) to governmental agencies where such disclosures are required or authorized by law;

(2) to medical or law enforcement personnel where the professional determines that there is a probability of imminent physical injury by the patient/client to himself or to others, or where there is a probability of immediate mental or emotional injury to the patient/client;

(3) to qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, but such personnel may not identify, directly or indirectly, a patient/client in any report of such research, audit, or evaluation, or otherwise disclose identi-

ties in any manner;

(4) to any person bearing the written consent of the patient/client, or a parent if the patient/client is a minor, or a guardian if the patient/client has been adjudicated incompetent to manage his personal affairs, or to the patient's/client's personal representative if the patient/client is deceased;

(5) to individuals, corporations, or governmental agencies involved in the payment or collection of fees for mental or emotional health services performed by a professional as defined in Section 1 of this Act.;

(6) to other professionals and personnel under the direction of the professional who are participating in the diagnosis, evaluation, or treatment of the patient/client; or

(7) in any official legislative inquiry regarding state hospitals or state school, provided that no information or records which identify a patient/client shall be released for any purpose unless proper consent to the release is given by the patient/client, and only records created by the state hospital or school or its employees shall be included under this subsection.

AMENDMENT XIV - U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULE 13. EFFECT OF SIGNING OF PLEADINGS, MOTIONS AND OTHER PAPERS; SANCTIONS

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their

knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose sanctions available under Rule 215-2b, upon the person who signed it, a represented party, or both ...

(10) BUSINESS RECORDS ACCOMPANIED BY AFFIDAVIT.

a. Records or photocopies; admissibility; affidavit; filing. Any record or set of records or photographically reproduced copies of such records, which would be admissible under Rule 803(6) of (7) shall be admissible in evidence in any court in this state upon the affidavit of the person who would otherwise provide the prerequisites of Rule 803(6) or (7), provided further, that such record or records along with such affidavit are filed with the clerk of the court for inclusion with the papers in the cause in which the record or records are sought to be used as evidence at least fourteen (14) days prior to the day upon which trial of said cause commences, and pro-

vided the other parties to said cause are given prompt notice by the party filing same of the filing of such record or records and affidavit, which notice shall identify the name and employer, if any, of the person making the affidavit and such records shall be made available to the counsel for other parties to the action or litigation for inspection and copying. The expense for copying shall be borne by the party, parties or persons who desire records and serve notice of said filing, in compliance with this rule. Notice shall be deemed to have been promptly given if it is served in the manner contemplated by Rule 21a, Texas Rules of Civil Procedure, fourteen (14) days prior to commencement of trial in said cause.